



IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
FLORENCE DIVISION

JOSE LUIS GUTIERREZ HERNANDEZ,	§	
Petitioner,	§	
	§	
vs.	§	CIVIL ACTION NO. 4:15-01002-MGL
	§	
WARDEN MCFADDEN,	§	
Respondent.	§	

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ORDER ADOPTING THE REPORT AND RECOMMENDATION,  
GRANTING RESPONDENT'S MOTION FOR SUMMARY JUDGMENT,  
AND DISMISSING THE PETITION WITHOUT AN EVIDENTIARY HEARING

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This case was filed as a 28 U.S.C. § 2254 action. Petitioner is proceeding pro se. The matter is before the Court for review of the Report and Recommendation (Report) of the United States Magistrate Judge suggesting that Respondent's motion for summary judgment be granted, the petition be dismissed without an evidentiary hearing, and any outstanding motions be deemed moot. The Report was made in accordance with 28 U.S.C. § 636 and Local Civil Rule 73.02 for the District of South Carolina.

The Magistrate Judge makes only a recommendation to this Court. The recommendation has no presumptive weight. The responsibility to make a final determination remains with the Court. *Mathews v. Weber*, 423 U.S. 261, 270 (1976). The Court is charged with making a *de novo* determination of those portions of the Report to which specific objection is made, and the Court may accept, reject, or modify, in whole or in part, the recommendation of the Magistrate Judge or recommit the matter with instructions. 28 U.S.C. § 636(b)(1).

The Magistrate Judge filed the Report on January 14, 2016, and the Clerk of Court entered Petitioner's objections to the Report on February 5, 2016. Petitioner also filed a motion for a certificate of appealability on the same date. The Court has reviewed the objections, but finds them without merit. Therefore, it will enter judgment accordingly.

In light of the standards set forth above, the Court has reviewed, *de novo*, the Report and Petitioner's objections. The Court finds that Petitioner's objections consist largely of restatements of arguments already advanced in prior filings, coupled with inapposite legal citations and efforts to present alternate factual scenarios insufficiently supported in the record. Nowhere in Petitioner's objections does he meaningfully counter any of the core legal determinations of the Magistrate Judge, such as his careful merits-based review of Petitioner's non-defaulted claims of ineffective assistance of counsel, including the Magistrate Judge's ultimate determination that Petitioner has failed to demonstrate that the state PCR court based its earlier review of these claims on unreasonable applications of the two-prong standard of *Strickland v. Washington*, 466 U.S. 668 (1984).

After a thorough review of the Report and the record in this case pursuant to the standard set forth above, the Court overrules Petitioner's objections, adopts the Report, and incorporates it herein. Therefore, it is the judgment of this Court that Respondent's motion for summary judgment is **GRANTED**, the petition is **DISMISSED** without an evidentiary hearing, and any outstanding motions are **DENIED AS MOOT**.

The governing law applicable to certificates of appeals provides that "[a] certificate of appealability may issue . . . only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2).

A petitioner satisfies this standard by demonstrating that reasonable jurists would find this Court's assessment of his constitutional claims is debatable or wrong and that any dispositive procedural ruling by this Court is debatable. *See Miller-El v. Cockrell*, 537 U.S. 322, 336 (2003); *Slack v. McDaniel*, 529 U.S. 473, 484 (2000); *Rose v. Lee*, 252 F.3d 676, 683 (4th Cir. 2001). In the case at bar, the legal standard for the issuance of a certificate of appealability has not been met. Therefore, it is the judgment of this Court that Petitioner's motion for a certificate of appealability from this Court is **DENIED**.

**IT IS SO ORDERED.**

Signed this 9th day of February, 2016, in Columbia, South Carolina.

s/ Mary Geiger Lewis  
MARY GEIGER LEWIS  
UNITED STATES DISTRICT JUDGE

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**NOTICE OF RIGHT TO APPEAL**

The parties are hereby notified of the right to appeal this Order within thirty days from the date hereof, pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.